

28th September 2023

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Re: Freedom of Information Request 202330 - Request Part Granted.

Dear

I refer to your request dated the 04th of August 2023 and extended by us on the 31st of August 2023, which you have made under the Freedom of Information Act 2014 (FOI Act) for records held by the Land Development Agency (LDA).

- *Copies of all correspondence between LDA officials of level principal officer and higher (or the LDA equivalent) and officials within the Port of Cork Company regarding a 61 hectare land parcel at the Tivoli Industrial Estate in Cork city, dated between July 1 2022 and December 31 2022*
- *Any internal memoranda or correspondence between management officials within the LDA regarding the same site between January 1 2023 and February 28 2023*

I wish to inform you that I have decided to part-grant your request on the 28th of September 2023.

The purpose of this letter is to explain that decision.

1. Findings, particulars and reasons for decisions.

Details of your request were provided to the relevant sections within the LDA to identify records held which were within the scope of your request.

The records requested are attached to this decision letter for your information. For clarity and for your convenience I am dividing your request into **Part A** and **Part B**.

Part A - Refuse

Under part A of your request, you sought “Copies of all correspondence between LDA officials of level principal officer and higher (or the LDA equivalent) and officials within the Port of Cork Company regarding a 61 hectare land parcel at the Tivoli Industrial Estate in Cork city, dated between July 1 2022 and December 31 2022”.

In this regard, I am to advise you that no records have been identified as sought by you.

I am refusing your request in accordance with Section 15(1)(a) of the Freedom of Information Act 2014, which states:



Refusal on administrative grounds to grant FOI requests

15(1) A head to whom an FOI request is made may refuse to grant the request where-
(a) the record concerned does not exist or cannot be found after all reasonable steps to ascertain its whereabouts have been taken,

There are no records within the scope of this part of your request held by the LDA.

Part B – Part - Grant

Under part B of your request, you sought “any internal memoranda or correspondence between management officials within the LDA regarding the same site between January 1, 2023 and February 28 2023”.

In this regard, I am to advise you that I have decided to part-grant this part of your request.

The FOI Act 2014 provides that in certain circumstances, a public body may refuse the release of certain records or part thereof. As such a number of redactions have been applied to the attached records under Sections 29, 36 and 37 of the Freedom of Information Act 2014. These redactions consist of points of discussion between the LDA and the Port of Cork Company, Commercially Sensitive Information and of phone numbers and email addresses of the employees of the LDA as these form part of the agencies’ IT security infrastructure.

These redactions are detailed in the Schedule of Records in **Appendix 1**.

Certain information within these records is part of an ongoing deliberative process between the LDA and the Port of Cork Company in relation to the site and as such will form an integral part of any outcome that is yet to be decided upon.

Section 29 of the Freedom of Information Act 2014 refers as follows:

Deliberations of FOI bodies

29(1) A head may refuse to grant an FOI request-
(a) if the record concerned contains matter relating to the deliberative processes of an FOI body (including opinions, advice, recommendations, and the results of consultations, considered by the body, the head of the body, or a member of the body or of the staff of the body for the purpose of those processes), and
(b) the granting of the request would, in the opinion of the head, be contrary to the public interest,
and, without prejudice to the generality of paragraph (b), the head shall, in determining whether to grant or refuse to grant the request, consider whether the grant thereof would be contrary to the public interest by reason of the fact that the requester concerned would thereby become aware of a significant decision that the body proposes to make.

Public Interest Test

As per section 29 of the FOI Act, I have considered the public interest issues which arise in this case and have taken account of the following factors in favour of release:

- Ensuring openness and transparency of organisational functions to the greatest possible extent.



- The public interest in members of the public exercising their rights under the FOI Act.
- Ensuring fairness of procedures and that decisions are fair and equitable and evenly applied.

In considering the public interest factors which favour withholding the records I have taken account of the following:

- Allowing a public body to make its decisions without undue intrusion into the process.
- The public interest is not best served by releasing these records.
- Premature release could negatively affect future decision-making processes.
- Premature release could contaminate the decision-making process.

A public interest test was carried out when considering the release of the records but, having balanced the factors both for and against the release, I have, on balance, decided that the public interest in preserving the integrity of the negotiation process would be better served by withholding the relevant parts of these records.

Commercially Sensitive Information

A number of redactions have also been applied to the attached records under Section 36 of the Act. These redactions are detailed in the Schedule of Records in **Appendix 1**.

Section 36 states that:

36. (1) Subject to subsection (2), a head shall refuse to grant an FOI request if the record concerned contains

(b) financial, commercial, scientific or technical or other information whose disclosure could reasonably be expected to result in a material financial loss or gain to the person to whom the information relates, or could prejudice the competitive position of that person in the conduct of his or her profession or business or otherwise in his or her occupation, or

(c) information whose disclosure could prejudice the conduct or outcome of contractual or other negotiations of the person to whom the information relates.

I am satisfied that the release of certain sensitive information contained within these records would prejudice the competitive position of the LDA. This therefore is commercially sensitive in accordance with the provisions of Section 36 of the Act

I am cognisant of the fact that the release of information under the Act is, in essence, a release to the public at large. If the records were made available to you it is reasonable to expect that it would prejudice the ability of the LDA to compete negotiations in the future as competitors would be aware of its position.

I am of the view that the release of this sensitive records could reasonably be expected to result in a material financial loss by the LDA as it could prejudice its competitive position in the conduct of its business. Furthermore, releasing this information could prejudice any current or future negotiations by the LDA.

I am refusing the release of parts of the records under the provisions of section 36(1)(b) & 36(1)(c) as they contain commercially sensitive information.



Public Interest Test

There is a Public Interest Test associated with section 36 of the FOI Act whereby my decision must be made having fully considered the harm and public interest relevant to this request.

I have considered the public interest issues which arise in your request, and have taken account of the following factors in favour of release:

- Ensuring openness and transparency of organisational functions to the greatest possible extent.
- The public interest in members of the public exercising their rights under the FOI Act.
- That there is more than just a transitory interest by the public in this information being released.
- The right to commercial confidentiality is outweighed by the needs of the public.

In considering the public interest factors which favour withholding the records as detailed in part one of your request, I have taken account of the following:

- Allowing a public body to hold commercial information without undue access by members of the public.
- The public interest is not best served by releasing these records.
- That the LDA can conduct its commercial activities with external stakeholders in a confidential manner.
- That there is no overriding public interest that outweighs the individual's right to privacy in this case commercial activities.

Having balanced the public interest factors both for and against the release, I decided that the public interest in preserving the information and the reasonable expectation that information can be maintained in confidential manner by the LDA outweighs the public interest which would be served were the detail released to you.

Section 37-Personal Information

Under the FOI Act, records are released without any restriction as to how they may be used and thus, release under the FOI Act, is in effect, and regarded as being released to the world at large. As a result, I am conscious of my obligations to retain personal information in a confidential and secure manner and prevent personal information from being released into the public domain unnecessarily. Additionally, the LDA as a matter of course redacts the mobile phone numbers and email addresses of employees as these are part of maintaining the body's IT security environment.

Section 2 of the FOI Act defines personal information as follows:

2. (1) In this Act

"personal information" means information about an identifiable individual that, either

(a) would, in the ordinary course of events, be known only to the individual or members of the family, or friends, of the individual, or

(b) is held by an FOI body on the understanding that it would be treated by that body as confidential, and, without prejudice to the generality of the foregoing, includes

(iii) information relating to the employment or employment history of the individual,



Section 37(1) provides that a public body shall refuse to grant a request if access to the records concerned involves the disclosure of personal information. I am satisfied that parts of certain records relate to third parties, and I am satisfied that the records consist of personal information.

37. (1) Subject to this section, a head shall refuse to grant an FOI request if, in the opinion of the head, access to the record concerned would involve the disclosure of personal information (including personal information relating to a deceased individual).

As section 37 requires a public interest test be carried out. I have considered the public interest issues which arise in this case and have taken account of the following factors in favour of release:

- Ensuring openness and transparency of organisational functions to the greatest possible extent.
- The public interest in members of the public exercising their rights under the FOI.
- That there is more than just a transitory interest by the public in this information.
- The right to privacy is outweighed by the needs of the public.

In considering the public interest factors which favour withholding the records, I have taken account of the following:

- The public interest is not best served by releasing these records.
- That the Organisation can conduct its business in a confidential manner.
- That there is a reasonable and implied expectation that sensitive personal information will remain confidential.
- That there is no overriding public interest that outweighs the individual's right to privacy.
- The Security Infrastructure of the LDA.

Having balanced the public interest factors both for and against the release, I have decided that the public interest in preserving the information and the reasonable expectation that information can be maintained in confidential manner by the LDA outweighs the public interest which would be served were the detail released to you.

2. Right of Appeal

In the event that you are unhappy with this decision you may appeal against it. If you need to make such an appeal, you can do so by writing to the Freedom of Information Unit, Land

Development Agency, 2nd Floor, Ashford House, Tara Street, Dublin 2 or by e-mail to foi@lda.ie.

Please note that a fee applies. This fee has been set at €30 (€10 for a Medical Card holder). Payment should be made by way of bank draft, money order, postal order or personal cheque,

and made payable to Head of Finance, Land Development Agency, 2nd Floor, Ashford House, Tara Street, Dublin 2.

Payment can be made by electronic means, using the following details:

Land Development Agency
2nd Floor, Ashford House
Tara Street, Dublin 2
D02 VX67



The Land Development Agency DAC
IE61AIBK93101264101092
BIC: AIBKIE2D

You must ensure that your FOI reference number (**FOI 202330**) is included in the payment details.

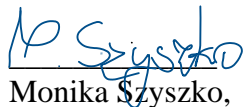
You should make your appeal within 4 weeks from the date of this notification, where a day is defined as a working day excluding the weekend and public holidays. However, the making of a late appeal may be permitted in appropriate circumstances. The appeal will involve a complete reconsideration of the matter by a more senior member of the staff of this body.

Please be advised that the Land Development Agency replies under Freedom of Information may be released into the public domain via our website at lda.ie.

Personal details in respect of your request have, where applicable, been removed to protect confidentiality.

Should you have any questions or concerns regarding the above, please contact me by telephone on (01) 9103400.

Yours sincerely,



Monika Szyszko,
Senior Compliance Manager

Appendix 1: Schedule of Records

Requester name:		Request Re:202330				
Page number	Description of document	Deletions	Relevant section of FOI Act	Reasons for deletion	Decision Maker's decision	
1-2	Email thread forwarded from Head of Strategic Planning of LDA to CEO of LDA Fw_ Confidential Draft Update	<p>Commercially Sensitive Information regarding this and other sites - paragraph pages 1 - 2</p> <p>3 subsequent bullet points page 2</p> <p>LDA personnel email addresses and phone nos. both pages</p> <p>Small reference to same Commercially sensitive material as above 1 item on page 2</p>	<p>Section 36</p> <p>Section 29</p> <p>Section 29</p> <p>Section 37</p> <p>Section 36</p>	<p>Commercially Sensitive</p> <p>Deliberations of FOI Bodies</p> <p>Deliberations of FOI Bodies</p> <p>Personal Information</p> <p>Commercially Sensitive</p>	Part grant	
3	Email thread – Draft redacted Study Scope of Service	<p>Commercially Sensitive Information – study title, names of 3rd parties, 1 paragraph discussing study</p> <p>LDA employee emails</p>	<p>Section 36</p> <p>Section 37</p>	<p>Commercially Sensitive</p> <p>Personal Information</p>	Part grant	
		Total number of pages			3	
		Total number of pages for full release			0	
		Total number of pages for partial release			3	
		Total number of pages being withheld			0	

